

BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 3 0 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

1998 Biennial Regulatory Review --
Streamlining of Mass Media Applications,
Rules, and Processes

MM Docket No. 98-43

Policies and Rules Regarding
Minority and Female Ownership of
Mass Media Facilities

MM Docket No. 94-149

TO: The Commission

COMMENTS IN SUPPORT OF MOTION FOR STAY

Floyco, Inc. ("Floyco"), permittee of unbuilt AM Station WORL, Altamonte Springs, Florida, by its counsel, hereby submits its comments in support of the "Motion For Stay, Or In The Alternative For Waiver Or 'Tolling'," filed by W. Russell Withers, Jr. ("Withers"), on May 12, 1999, in the above-captioned proceeding.

Floyco has filed a Petition for Reconsideration, as has Withers, of certain rule changes adopted by the Commission in this proceeding¹ governing the construction period of broadcast stations and the rules for obtaining construction permit extensions. In its Petition, Floyco agrees with Withers that the strict three-year limit should not be applied retroactively to prejudice existing permit holders. Floyco, like Withers, has relied on the Commission's previous

¹ The rule changes were adopted in the Commission's *Report and Order* in this proceeding, 63 FR 70040, December 18, 1998.

No. of Copies rec'd 074
List ABCDE

extension rules² and had no reason to believe from this proceeding's *Notice of Proposed Rule Making*³ that the Commission's previous rules would not be maintained with respect to them. For these and other reasons concerning Floyco's particular situation which are set forth more fully below, Floyco supports Withers' Motion For Stay of the application of the new automatic forfeiture rules pending the Commission's decision on Floyco and Withers' Petitions For Reconsideration.

The Commission is well aware of the unique facts surrounding Floyco's current situation with respect to the construction of Station WORL.⁴ By virtue of the rule changes adopted in this proceeding, WORL's permit, initially granted on December 5, 1984, will automatically be forfeited on August 8, 1999, at the end of its last six-month extension⁵ if the station is not built by then. This automatic forfeiture will occur no matter what the state of WORL's construction is and no matter what the reasons are that prevented its completion.

Although WORL's permit was originally granted in 1984, Floyco filed a major modification application (File No. BMP-880218AE) to change the station's frequency and city of

² Until they were deleted, effective February, 1999, the Commission's former extension provisions, set forth in Section 73.3534 of the Commission's Rules, permitted extension of broadcast construction permits when the permittee could demonstrate that construction was complete and testing underway, or that substantial progress had been made on construction, or, that no progress had been made for reasons clearly beyond the permittee's control.

³ See 63 FR 19226, April 17, 1998.

⁴ Like Withers, Floyco has also filed with respect to its own station a Motion to waive the Commission's new automatic forfeiture rule or toll the station's construction period. Floyco's Motion is being filed with the Commission under separate cover simultaneously herewith.

⁵ The Commission granted WORL's last six-month extension on February 8, 1999, in File No. BMP-990115JA.

license from Christmas, Florida, to Altamonte Springs in 1988. That amended application led to the filing of a petition to deny, which resulted in the filing of responsive pleadings and technical amendments by Floyco. However, although all pertinent pleadings and amendments were filed and were ripe for decision before the end of 1990, the FCC inexplicably did not act on WORL's modification until almost eight years later in May, 1998.⁶

During this eight-year period, two hurdles developed to delay WORL's construction. The first hurdle was the reduction by the site owner, because of other development on the site during the 1990s, of the amount of land available for WORL's towers, requiring Floyco to slightly reduce the separations between the towers of its three-tower array and to reduce each tower's height. However, Floyco overcame this hurdle by requesting and obtaining from the Commission a permit authorizing these minor modifications in only two months.⁷ The second hurdle, however, which was the enactment in 1997 of a local "set back" zoning ordinance⁸ applicable to WORL's towers, did result in delaying the station's construction. Because of the new ordinance, it was not until June 7, 1999, that Floyco was finally able to obtain its local building permit.⁹

⁶ Specifically, the Commission granted the WORL modification application by letter order dated May 15, 1998 (Ref. No. 1800B2-EAL).

⁷ The Commission granted the minor modifications required by the site owner in File No. BMP-980730AB. That application was filed at the end of July and granted only two months later on October 1, 1998.

⁸ The "setback" ordinance requires that a tower be "setback" a certain distance from adjacent property lines depending upon the proposed height of the tower.

⁹ After the Commission granted WORL's construction permit in May, 1998, Floyco diligently attempted to resolve the strict requirements that the local ordinance placed on the construction of WORL's towers. Immediately upon being told of the new ordinance, Floyco

Consequently, it was because of the Commission's inexplicable eight-year delay in acting on WORL's application and related filings that Floyco was faced with the hurdle, although relatively minor, of dealing with the landlord's site modifications and with the more significant hurdle of the local zoning ordinance. If the Commission had acted on Floyco's application within a reasonable period of time after 1990 when it was ripe for decision, not only would Floyco have been able to construct and operate the station and avoid these two hurdles, but it would have been able to deal with such problems with appropriate requests, under the Commission's former rules, for extension of construction time.¹⁰ Now, however, because of the Commission's inexplicable eight-year delay in acting on Floyco's major change permit application, Floyco is in the untenable position of having only two months to construct, proof and place on the air a three-tower directional AM array.¹¹ While Floyco has every hope that its work

commissioned a study to demonstrate that WORL's towers should not be subject to the new ordinance. Floyco also retained a registered professional engineer in the Altamonte Springs area to prosecute WORL's building permit application before local authorities. The president of Floyco and the engineer diligently prosecuted the application until it was granted in June, 1999.

¹⁰ See Footnote 2, *supra*.

¹¹In anticipation of a grant of the local building permit, Floyco had lined up visits with its subcontractors at the construction site and confirmed equipment orders. Therefore, on Monday, June 7th, the actual grant date, Floyco representatives were ready and did meet at the site with Floyco's consulting engineer and phasor manufacturer to finalize technical details as to transmission and sampling line runs. On Tuesday, June 8th, the general contractor and tower erector met with Floyco representatives at the site and scheduled the construction. Since that date, the site, which had been badly overgrown, has been cleared as necessary for construction. The site has also been surveyed and core soil samples have been drilled and sent to a local firm for study. The results of that study, which was just completed, require the foundation plans to be redrawn by Floyco's civil engineer. After the plans are redrawn and approved, a drilling contractor, who is being paid standby rates, will have to drill 35 foot foundation holes. The drilling is now tentatively scheduled for July 6, 7 and 8. After the holes are drilled and the concrete is set, which takes another three days, the tower contractor is anticipating that the towers, which are being shipped from the Midwest, will be erected by July 14th. When the

will be completed before August 8, nevertheless, it requests that the Commission stay the effective date of its new Section 73.3598 automatic forfeiture rule and grant WORL extended construction time.

Floyco's loss of the WORL's authorization would obviously be a harsh result. Floyco has expended a substantial amount of time and money in obtaining authorization for construction of WORL, and in the construction of the station. If the Commission does not stay the effective date of its automatic forfeiture rule, Floyco would suffer substantial loss and the people of Altamonte Springs would be deprived of their first local aural broadcast service. Therefore, Floyco, like Withers, and the other similarly situated permittees who have sought reconsideration of the Commission's new Section 73.3598 automatic forfeiture provisions, should be treated with "simple decency and administrative fairness" (as urged by Withers at paragraph I of his Motion) and granted a reprieve of this harsh rule until the Commission considers and acts on their petitions.¹²

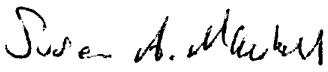
towers are erected and the cranes and other heavy equipment is moved out, the ground system will have to be completed, the cables will have to be put in place and the engineers will have to hook up the transmitter. Although uncertain as to a definitive date, Floyco is anticipating completing all of this construction and being able to start the tune up of its three-tower array on or around August 1. Consequently, while Floyco hopes, it is not certain, even barring the occurrence of any weather or other delays beyond its control, that it will be able to complete the construction and tune up process, take all necessary field strength readings and file a license application before August 8.

¹² See the Statement of the President of Floyco, Inc. attached hereto as Exhibit A.

WHEREFORE, for the reasons set forth hereinabove, Floyco, Inc. supports the Motion filed by W. Russell Withers, Jr. requesting the Commission to stay the effective date of its new Section 73.3598 automatic forfeiture provisions.

Respectfully submitted,

FLOYCO, INC.

By: 
James P. Riley
Susan A. Marshall

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

June 30, 1999

EXHIBIT A

Attached hereto is a Statement
signed by Carl J. Auel, President, of Floyco, Inc.
Attached is a facsimile of the signed
Statement. The original executed copy will
be submitted to the Commission as soon
as it is received by counsel

STATEMENT

Carl J. Auel hereby states under per alty of perjury as follows:

3. I am President of Floyco, Inc. permittee of unbuilt AM station WORL, Altamonte Springs, Florida.
4. I have read the foregoing Comments in Support of Motion for Stay and hereby state that the information contained therein is complete and accurate to the best of my information, knowledge and belief.


Carl J. Auel, President, Floyco, Inc.

6/30/99
Date

CERTIFICATE OF SERVICE

I, Stacy Eveslage, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Comments in Support of Motion For Stay" was sent this 30th day of June, 1999, by first-class United States mail, postage prepaid to:

NAME OF PARTY	CONTACT ADDRESS
MICHAEL ROBERT BIRDSILL	Michael Robert Birdsill P.O. Box 1921 Chico, CA 95927
ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS	Marilyn Mohrman-Gillis, Esquire Assn. of America's Public Television Stations 1350 Connecticut Avenue, N.W. Washington, D.C. 20036
FAMILY FIRST BROWNE MOUNTAIN TELEVISION WICHITA COMMUNICATIONS	Donald E. Martin, Esquire Donald E. Martin, P.C. P.O. Box 19351 Washington, D.C. 20036
LONG ISLAND MULTI-MEDIA, LLC	Timothy K. Brady, Esquire Law Office of Timothy K. Brady P.O. Box 986 Brentwood, TN 37027-0986
CLINTON COUNTY BROADCASTING, INC.	Todd M. Stansbury, Esquire Wiley, Rein and Fielding 1776 K Street, N.W. Washington, D.C. 20006
BRUNSON COMMUNICATIONS, INC. STAR COUNTY HISTORICAL FOUNDATION INC. POLLACK BROADCASTING COMPANY ISAAC MAX JARAMILLO	Barry D. Wood, Esquire Ronald D. Maines, Esquire Wood Maines & Brown, Chartered 1827 Jefferson Place, N.W. Washington, D.C. 20036

SUNGUILT CORP., INC.	James L. Winston, Esquire Rubin, Winston, Diercks, Harris & Cooke, L.L.P. 10th Floor 1333 New Hampshire Avenue, N.W. Washington, D.C. 20036
HARRY J. PAPPAS AND STELLA PAPPAS	David D. Burns, Esquire Paul, Hastings, Janofsky & Walker 10th Floor 1299 Pennsylvania Avenue, N.W. Washington, D.C. 20004-2400
ROYCE INTERNATIONAL BROADCASTING COMPANY	Eric T. Werner, Esquire Verner, Liipfert, Bernard, McPherson & Hand, Chartered 901 Fifteenth Street, N.W. Washington, D.C. 20005-2301
GROWING CHRISTIAN FOUNDATION CORNERSTONE COMMUNITY RADIO, INC.	J. Geoffrey Bentley, Esquire Bentley Law Office P.O. Box 807 Herndon, VA 22070
MILWAUKEE AREA TECHNICAL COLLEGE	Todd D. Gray, Esquire Dow, Lohnes and Albertson Suite 800 1200 New Hampshire Avenue, N.W. Washington, D.C. 20036
BOARD OF REGENTS OF UNIVERSITY OF WISCONSIN SYSTEM	Margaret L. Miller, Esquire Dow, Lohnes and Albertson Suite 800 1200 New Hampshire Avenue, N.W. Washington, D.C. 20036
CENTRAL FLORIDA EDUCATIONAL TELEVISION, INC.	Sally A. Buckman, Esquire Leventhal Senter & Lerman Suite 600 2000 K Street, N.W. Washington, D.C. 20006
MICHAEL L. HORVATH	Lauren A. Colby, Esquire 10 East Fourth Street Frederick, MD 21705-0113

DAVID TILLOTSON	David Tillotson, Esquire 4606 Charleston Terrace, N.W. Washington, D.C. 20007-1911
CLAIRE BENEZRA FARM BELT RADIO, INC. MAQUOKETA BROADCASTING COMPANY	Jerrold D. Miller, Esquire Miller & Miller Suite 760 1990 M Street, N.W. Washington, D.C. 20036
REESE ASSOCIATES, INC.	Naomi S. Travers, Esquire Arter & Hadden, LLP Suite 400 K 1801 K Street, N.W. Washington, D.C. 20036
Z-SPANISH MEDIA CORPORATION KNOX BROADCASTING GROUP, INC. JERSEY SHORE BROADCASTING CORPORATION CONCORD VENTURES LIMITED NATIONAL MINORITY T.V., INC. PEGASUS BROADCASTING TELEVISION, INC.	Dawn M. Sciarrino, Esquire Fisher, Wayland, Cooper, Leader & Zaragoza, LLP Suite 400 2001 Pennsylvania Avenue, N.W. Washington, D.C. 20006
NATIONAL ASSOCIATION OF BROADCASTERS	Jack Goodman, Esquire General Counsel National Association of Broadcasters 1771 N Street, N.W. Washington, D.C. 20036
EQUITY BROADCASTING CORPORATION LOUIS MARTINEZ	Alan C. Campbell, Esquire Irwin, Campbell & Tannenwald Suite 200 1730 Rhode Island Avenue, N.W. Washington, D.C. 20036
BROWN BROADCASTING SERVICE, INC.	Peter Tannenwald, Esquire Irwin, Campbell & Tannenwald suite 200 1730 Rhode Island Avenue, N.W. Washington, D.C. 20036

FEDERAL COMMUNICATIONS BAR ASSOCIATION	Howard Weiss, Esquire Fletcher, Heald & Hildreth, P.L.C. 11th Floor 1300 N. 17th Street Arlington, VA 22209
ASPEN FM, INC. CALIPATRIA BROADCASTING CO. L.L.C. RANCHO PALOS VERDES BROADCASTERS, INC. ENTRAVISION HOLDINGS, LLC	Peter Tannenwald, Esquire Irwin, Campbell & Tannenwald suite 200 1730 Rhode Island Avenue, N.W. Washington, D.C. 20036
KM COMMUNICATIONS, INC.	Howard Weiss, Esquire Fletcher, Heald & Hildreth, P.L.C. 11th Floor 1300 N. 17th Street Arlington, VA 22209
KRTS, INC.	David S. Keir, Esquire Leventhal Senter & Lerman Suite 600 2000 K Street, N.W. Washington, D.C. 20006
BE-MORE BROADCASTING GAMMON & GRANGE, P.C.	A. Wray Fitch III, Esquire Gammon and Grange 8280 Greensboro Drive, 7th Floor McLean, VA 22102-3807
EDUCATIONAL BROADCASTING CORP. KCWE, INC.	Barbara K. Gardner, Esquire Leventhal Senter & Lerman Suite 600 2000 K Street, N.W. Washington, D.C. 20006
CBS CORPORATION	Nancy L. Wolf, Esquire Leventhal Senter & Lerman Suite 600 2000 K Street, N.W. Washington, D.C. 20006

EBT BROADCASTING, L.L.C.	Jerome S. Boros, Esquire Robinson, Silverman, Pearce, Aronsohn & Berman, LLP 1290 Avenue of the Americas New York, NY 10104
ALLBRITTON COMMUNICATIONS COMPANY	Jerald N. Fritz, Esquire Vice President Allbritton Communications Company Suite 300 808 17th Street, N.W. Washington, D.C. 20006
GRAHAM BROCK, INC.	Mr. H. Stuart Graham, Jr. Graham Brock, Inc. 10 Sylvan Drive, Suite 26 P.O. Box 24466 St. Simons Island, GA 31522
WAIMEA BROADCASTING, INC.	Mark Van Bergh, Esquire Arter & Hadden Suite 400K 1801 K Street, N.W. Washington, D.C. 20006
RICHARD L. HARVEY (WBHX)	Mr. Richard L. Harvey 1018 Hillcrest Drive Neshanic Station, NJ 08853
COHEN, DIPPELL & EVERIST, P.C.	Mr. Donald Everist, P.E. Cohen, Dippell & Everist Suite 1100 1300 L Street, N.W. Washington, D.C. 20005
INDEPENDENT BROADCAST CONSULTANTS, INC.	Mr. William Sitzman Independent Broadcast Consultants, Inc. 110 County Road 146 Trumansburg, NY 14886-9721

INSTITUTE FOR PUBLIC REPRESENTATION ASSOCIATION OF INDEPENDENT VIDEO AND FILMMAKERS CENTER FOR MEDIA EDUCATION CIVIL RIGHTS FORUM OMB WATCH	Randi M. Albert, Esquire Angela J. Campbell, Esquire Citizens Communications Center Georgetown University Law Center Suite 312, 600 New Jersey Avenue, N.W. Washington, D.C. 20001
VIR JAMES ENGINEERS	Timothy C. Cutforth, P.E. Vir James Engineers 965 South Irving Street Denver, CO 80219
MEDIA ACCESS PROJECT	Cheryl A. Leanza, Esquire Media Access Project Suite 400 1707 L Street, N.W. Washington, D.C. 20036
SEAWAY BROADCASTING, INC.	James R. Cooke, Esquire Harris Beech & Wilcox Suite 1200 1750 K Street, N.W. Washington, D.C. 20006
PRESS COMMUNICATIONS CAROLINA CHRISTIAN BROADCASTING, INC.	Harry F. Cole, Esquire Gene Bechtel, Esquire Bechtel & Cole, Chartered Suite 250 1901 L Street, N.W. Washington, D.C. 20036
CUMULUS MEDIA, INC.	Bruce D. Ryan, Esquire Paul, Hastings, Janofsky & Walker 1299 Pennsylvania Avenue, N.W., 11th Floor Washington, D.C. 20004-2400
U.P. WIRELESS, LLC MARK SILBERMAN	Kenneth E. Hardman, Esquire Moir & Hardman Suite 901 1828 L Street, N.W. Washington, D.C. 20036

W. RUSSELL WITHERS, JR.
COVENANT NETWORK
CWA BROADCASTING, INC.
DAVID M. LISTER
JOHN HARVEY REES

Dennis J. Kelly, Esquire
P.O. Box 6648
Annapolis, MD 21401


Stacy Eveslage